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25-8238  
#322  
Pay. Allen  
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\*OGC Has Reviewed\*

14 May 1954

MEMORANDUM FOR: Chief of Administration (DD/P)

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SUBJECT : Mr. [REDACTED] - Hardship Claim

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1. Mr. [REDACTED] claim was originally forwarded to this office in March prior to submission to the DD/A. At that time we said that we had been unable to discover any theory under which per diem could be allowed in the absence of a temporary duty or a travel status and that we were unable to see any basis for consideration of the claim by the DD/A. The claim has now been resubmitted by EE Division for further consideration.

2. After restudy of the facts underlying the claim, we must reiterate what we said in our former opinion. At the same time, we would like to set forth in some detail the reasons for our opinion.

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3. The file indicates that Mr. [REDACTED] was a member of the [REDACTED] Mission who was transferred PCS to Washington in October 1953 for home leave and reassignment, no assignment being then available in the [REDACTED] Mission. Upon reporting to Washington at the conclusion of his home leave in January 1954 he was informed of an assignment with the [REDACTED] Mission which would be available by March 1. Mr. [REDACTED] accepted the [REDACTED] assignment and, after a two month residence in Washington, departed for [REDACTED] on March 4. He is claiming from the Agency reimbursement of the excess living costs occasioned by his temporary accommodations in Washington from January to March.

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4. The file also indicates that Mr. [REDACTED] at the time of departure from the [REDACTED] Mission was ready, willing and able to accept an assignment anywhere in the world at the conclusion of his home leave. We gather that he would have returned immediately to the [REDACTED] Mission for another tour of duty were it not for the fact that no assignment was available at the time of his departure. The covering memorandum from the Chief, EE Division, points out that Mr. [REDACTED] was in a temporary status from January to March; this office agrees completely with the accuracy of this statement as a practical description of Mr. [REDACTED] status. On the other hand, we see no means by which the legal consequences of PCS and TDY statuses can be avoided.

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5. As you know, in certain cases where the facts support the proposed amendment this office would have no legal objection to the amendment of travel orders to reflect permanent transfer from [REDACTED] to another post as yet undetermined with temporary duty in Washington during a period of assessment and training. However, if such amendment were made, the normal incidents of TDY would apply with the result that the Government could not pay for the shipment of household effects so that the individual concerned would have to pay for this shipment and, in cases where home leave had not been earned, travel of his family at his personal expense.

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6. It should also be noted that the request has been made in the memorandum accompanying Mr. [REDACTED] claim that it be approved under the provisions of CFR 10.12. As stated in our first opinion, we see no basis on which the DD/A could consider the claim under that section of the CFR's. To do so would be to state in effect that the matter is directly concerned with some aspect of this Agency's particular operational functions. In our opinion, the difficulty in which Mr. [REDACTED] finds himself is not the result of any function peculiar to this Agency but is rather an administrative problem which may occur in any agency subject to normal Government regulations.

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7. As a corollary to our opinion in this case, may we recommend a procedure for future cases. Our recommendation admittedly may cause some inconvenience but may save considerable financial sacrifice where an employee has finished an overseas tour and is transferred to Washington for assignment after home leave. In such situations we recommend that the employee be transferred PCS to a station as yet undetermined, with temporary duty in Washington following his home leave. His family may accompany him to whatever place he has designated for home leave purposes, but his household effects should be left at his overseas post ready for shipment. At the conclusion of his home leave he should leave his family at the home leave site and proceed to Washington alone. As soon as his new assignment is determined, his goods may be shipped to his new station and he and his family may travel to his new station at Government expense.

8. A copy of this memorandum is being supplied to EE Division together with the papers previously submitted. We would be happy to discuss with either your office or EE/Administration any aspect of this case, our proposal for future action or any alternatives which may occur to you or them.

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Office of General Counsel

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cc: EE Division  
Legal, Vital  
Subject, Signer, Chrono